IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5285 of 1999

to

FIRST APPEALNo 5296 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

DECD.JAGUBHAI BHAVANBHAI,THRO'HIS HEIRS

Appearance:

1. First Appeal No. 5285 of 1999

Mr.A.Y.Kogje, learned A.G.P.for Petitioner No. 1-2

..... for Respondent No. 1

MR GM AMIN for Respondent No. 1/1,1/3-1/6

MR VIJAY N RAVAL for Respondent No. 1/2

CORAM : MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. These appeals, which are filed under Sec. 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Sec. 96 of the Code of Civil Procedure 1908, are directed against common judgment and award dated October 15, 1998 rendered by the learned Second Extra Assistant Judge, Vadodara in Land Reference Case nos. 902 to 913 of 1990 by which it is held that the claimants are entitled to get compensation for their acquired lands, at the rate of Rs.8.50 ps. per sq.mtr.

2. A proposal was received by the State Government that agricultural and non-agricultural lands of village Tulsigam, Taluka Savli, District Vadodara were needed for the public purpose of construction of canals under Narmada canal project. On perusal of proposal, the State Government was satisfied that the agricultural and non-agricultural lands of village Tulsigam were likely to be needed for the said public purpose. Therefore, a notification was issued under Sec. 4(1) of the Act and published in the official gazette on May 8, 1986. The land owners had objected to the acquisition. After considering their objections, the Special Land Acquisition Officer had forwarded his report as contemplated by Sec. 5(A)(2) of the Act to the State Government. The report was taken into consideration by the State Government and the State Government was satisfied that the lands which were specified in the notification published under Sec. 4(1) of the Act were needed for public purpose of construction of canals under Narmada canal project. Therefore, a declaration under Sec. 6 of the Act was made which was published in Government Gazette on May 14, 1987. The owners of the lands were thereafter served with notices under Sec. 9 (2) of the Act for determination of compensation. The claimants had appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.10/- per sq.mtr. However, having regard to the development which had taken in the nearby area and the prevailing prices, the Land Acquisition officer had offered compensation to the claimants at the rate of Rs. 1.80 per sq.mtr. for irrigated lands and at the rate of Rs.1.30 per sq.mtr. for non-irrigated lands by his award dated January 15, 1988. The claimants were of the view that the offer of compensation made by the Land

Acquisition officer was inadequate. Therefore, they had submitted applications requiring the Land Acquisition officer to refer the matters to the District Court for determination of appropriate compensation. Accordingly, references were made by the Special Land Acquisition Officer to District Court, Vadodara which were registered as Land Reference Case nos. 902 of 1990 to 913 of 1990.

3. In the reference applications, it was averred by the claimants that the lands acquired had great potentiality and as they were fertile, each claimant was deriving substantial income from the sale of agricultural produces. It was also claimed that in view of the sale transactions of the lands situated nearby, the offer of compensation made by the Special Land Acquisition Officer was inadequate and that they should be awarded compensation at the rate of Rs.10/- per sq.mtr. The reference applications were contested by the appellants vide written statement at exh. 11 contending interalia that the Land Acquisition officer had determined market value of the lands acquired after taking into consideration the fertility of the land as well as the sale instances of the lands situated nearby and therefore the applications should be dismissed.

4. Having regard to the rival pleadings of the parties, necessary issues for determination were raised by the reference court. On behalf of the claimants, Mr.Ghanshyambhai Jagubhai Patel was examined at exh. 19 whereas on behalf of the appellants Mr.J.K.Vyas who was then discharging duties in the office of Narmada project, Unit no. 5 was examined at exh. 21. On behalf of the claimants, documents including previous award of the Reference Court rendered on May 6, 1992 by the learned Jt.District Judge, Panchamahals, Godhra in Land Acquisition Reference nos. 324 of 1988 to 332 of 1988, were produced to substantiate the claim advanced in reference applications. On appreciation of evidence adduced by the parties, the reference court was of the opinion that previous award was relevant as well as comparable for the purpose of determining market value of the lands acquired from village Tulsigam. On the basis of previous award, the reference court has held that the claimants would be entitled to compensation at the rate of Rs.8.50/- per sq.mtr. by the impugned award which has given rise to abovenumbered appeals.

5. Mr.A.Y.Kogje, learned counsel of the State Government contended that in instant cases, notification under Sec. 4(1) of the Act was published on May 8, 1986 whereas the previous award indicates that notification

under Sec. 4(1) of the Act was published for acquiring lands of village Timba, Taluka Godhra on August 21, 1986 and therefore previous award should not have been relied upon for the purpose of determining market value of the lands acquired from village Tulsigam. According to the learned counsel of the State Government, no reliable and cogent evidence was led by the claimants to establish that lands which were acquired from village Timba were similar in all respects to the lands of village Tulsigam with which the court is concerned in instant appeals and therefore the whole basis adopted by the reference court for determination of compensation being illegal, the appeals should be allowed.

6. M/s G.M.Amin and Mr.V.N.Raval learned advocates appearing for the claimants contended that the evidence of the claimant establishes that the lands of village Timba which were acquired were adjacent to the lands acquired from village Tulsigam and therefore it was wrong to argue that previous award was not relevant for the purpose of determining market value of the lands acquired from village Tulsigam. What was emphasized was that the claim advanced on behalf of the claimants that the lands of village Timba and village Tulsigam were similar and that the owners were able to reap same pattern of crop was not demonstrated to be false by the appellants and therefore reference court was justified in placing reliance on the previous award for determining market value of the lands of village Tulsigam. According to the learned counsels appearing for the claimants a just decision has been rendered by the reference court determining market value of the lands acquired and therefore the appeals should be dismissed.

7. We have heard the learned advocates of the parties and taken into consideration the evidence on record. It is an admitted position that no sale deeds were produced by the claimants before the reference court for the purpose of claiming higher compensation and that previous award of the reference court relating to lands of village Timba was produced in support of enhanced rate of compensation. Mr.Ghanshyam Jagubhai Patel who was examined at exh. 19 by the claimants had asserted that the lands acquired were adjacent to lands of village Timba which were also acquired for the same purpose. According to him, the lands of both the villages were similar in all respects and even pattern of crop grown thereon was also the same. In his cross-examination by the learned counsel of the appellants, it was denied by him that the lands of village Timba and lands of village Tulsigam were of different kinds. During the course of cross-examination, the witness had produced map to

substantiate his claim that the lands acquired in instant case were adjacent to the lands of village Timba. Thus, the evidence of witness Ghanshyam Jagubhai Patel establishes that the lands of village Timba and lands of village Tulsigam were similar in all respects. Mr.J.K.Vyas who was examined on behalf of the appellants at exh. 21 could not produce convincing evidence before the court to establish that the lands of village Timba were not similar in all respects to lands of village Tulsigam. He had to admit that he had no personal knowledge about the lands acquired and that he was deposing before the court on the strength of contents of the award which was rendered by the Special Land Acquisition Officer. Under the circumstances, this court is of the opinion that the finding recorded by the reference court that previous award of the reference court relating to lands of village Timba was relevant for determining market value of the lands of village Tulsigam is eminently just and the same is hereby upheld. It is well settled principle of law that earlier award of the reference court or the High Court in respect of similar and/or adjacent lands and which has become final between the parties can be taken into consideration for the purpose of ascertaining the market value of the lands acquired subsequently from adjoining area. Therefore, the reference court did not commit any error in placing reliance on the previous award relating to lands of village Timba for determining market value of the lands acquired which are subject matter of instant appeals. The learned counsels of the parties have pointed out that though the witness examined on behalf of the claimants had produced previous award of reference court in Land Acquisition Reference Case nos. 324/88 to 332/88 relating to lands of village Timba, some another award was produced on the file but relevant award would be the award which is referred to and relied upon by the reference court in the impugned judgment and which is also referred to by the witness of the claimants in his deposition before the reference court. A bare reading of the judgment and award dated May 6, 1992 rendered by the learned Jt.District Judge, Panchmahals Godhra in Land Acquisition reference nos. 324/88 to 332/88 indicates that notification under Sec. 4(1) of the Act was published in the official gazette on August 21, 1986 for acquiring the lands of village Timba for the same purpose i.e. Narmada canal project and that the claimants had claimed compensation at the rate of Rs.20/- per sq.mtr. before the Special Land Acquisition Officer. The judgment further indicates that by an award dated March 30, 1988 the Land Acquisition Officer had offered compensation to the claimants of that case at the rate of

Rs.1.40 per sq.mtr. and the reference court had held that the claimants were entitled to compensation at the rate of Rs.10.40 per sq.mtr. Though the notification under Sec. 4(1) of the Act was published on August 21, 1986 for the purpose of acquiring lands of village Timba and notification in instant case under Sec. 4(1) of the Act was published on May 8, 1986 this Court is of the opinion that earlier award being relevant should be taken into consideration for the purpose of determining market value of the lands acquired in instant case. However, the learned advocate of the claimants has produced simple copy of judgment dated February 6, 1995 rendered by the Division Bench comprising B.N.Kirpal C.J. (as he then was) and A.N.Divecha, J in First Appeal nos. 15/95 to 23/95 for perusal of the court. It indicates that judgment and award dated May 6, 1992 rendered by the learned Jt.District Judge, Panchmahals Godhra in Land Acquisition reference nos. 324/88 to 332/88 was subject matter of challenge in the abovenumbered appeals and the High Court had reduced compensation payable to the claimants at the rate of Rs.7/- per sq.mtr. The learned counsel of the claimants has also produced simple copy of order dated September 27, 1996 rendered by the Supreme Court in petition(s) for Special Leave to Appeal (Civil) No. (s) 19069-76/95 for perusal of the court which indicates that the judgment dated February 6, 1995 rendered by the High Court in First Appeal nos. 15/95 to 23/95 was confirmed by the Supreme Court. Having regard to the fact that in instant cases notification under Sec. 4(1) of the Act was published earlier than the notification which was issued for acquiring lands of village Timba and that owners of the lands of village Timba have been awarded compensation at the rate of Rs.7/- per sq.mtr., this court is of the opinion that the claimants in instant cases also would be entitled to receive compensation at the rate of Rs.7/per sq.mtr. and not at the rate of Rs.8.50 per sq.mtr. as held by the reference court. The appeals therefore will have to be accepted in part.

8. The learned advocate of the claimants pleaded that the Reference Court was not justified in rejecting the claim for interest on the award of additional amount payable under Sec. 23(1)(A) of the Act and on solatium under Sec. 23(2) of the Act and further holding that the claimants were not entitled to solatium on the additional amount under Sec.23(1)(A) of the Act. In support of this plea, the learned advocate relied upon decisions of Supreme Court rendered in (1) Sunder V/s Union of India 2001(3) G.L.H. 446 and (2) Nagpur Improvement Trust V/s Vasant Rao & Ors. 2003(1) G.L.H. 140. Learned A.G.P.

pleaded that the claimants having not filed appeals or cross-objections should not be granted this relief which is specifically denied by the reference court. In Shree Vijay Cotton & Oil Mills Ltd. V/s State of Gujarat (1991) 1 S.C.C.262, Supreme Court has held that it is not necessary for the claimant to file separate appeal/cross-objections before the High Court for the purpose of claiming interest under Sec. 28 or Sec. 34 of the Act and that the claimant can claim the interest in the said appeal. In view of this principle of law, the plea raised by the learned A.G.P. cannot be accepted and is hereby rejected. Having regard to the principles laid down by the Supreme Court in Sunder (supra) and Nagpur Improvement Trust (supra) it is held that the claimants would be entitled to interest on the award of additional amount payable under Sec.23(1)(A) of the Act as well as on the solatium under Sec. 23(2) of the Act, subject to payment of court fees if any.

9. For the foregoing reasons, the appeals partly succeed. It is held that the claimants shall be entitled to get compensation for the lands acquired at the rate of Rs.7/- per sq.mtr. and not at the rate of Rs.8.50 per sq.mtr. as determined by the reference court. It is further held that the claimants would be entitled to interest on the award of additional amount payable under Sec. 23(1)(A) of the Act and on solatium payable under Sec. 23(2) of the Act subject to the payment of court fees if any. Rest of the directions given in the impugned award are hereby upheld. The appeals are allowed to the extent indicated herein above. There shall be no orders as to costs. The office is directed to draw the award in terms of this judgment. Interim relief granted by the court vide order dated April 24, 2003 is hereby vacated.

(J.M.PANCHAL, J)

(SHARAD D DAVE, J)

srilatha